IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 29, 2008

ERIC L. ANDERSON v. HOWARD CARLTON, WARDEN

Direct Appeal from the Criminal Court for Johnson County
No. 5186 Lynn Brown, Judge

No. E2008-00096-CCA-R3-HC - Filed September 24, 2008

Petitioner, Eric L. Anderson, appeals the trial court's summary dismissal of his petition for writ of habeas corpus in which he alleged that his pleas of guilty to three counts of aggravated rape were not made voluntarily, knowingly, and intelligently; that he received ineffective assistance of counsel; and that his sentences violate the principles set forth in Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856, 166 (2007). After a thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

Eric L. Anderson, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General, and Tony Clark, District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

Petitioner entered pleas of guilty to three counts of aggravated rape on May 30, 1991, and the trial court sentenced Petitioner as a Range I, standard offender, to fifteen years for each offense. Because Petitioner's offense in case no. 187547 was committed while he was on bond for the other two offenses, the sentence in case no. 187547 was ordered to run consecutively to the sentences in case nos. 186288 and 186289 for an effective sentence of thirty years. See T.C.A. § 40-20-111(b). Petitioner subsequently filed a petition for post-conviction relief in which he alleged that his pleas of guilty were not made voluntarily, knowingly and intelligently and that his trial counsel rendered ineffective assistance of counsel in the negotiation and entry of his pleas. The trial court's denial of post-conviction relief was upheld on appeal. Eric LaVaughan Anderson v. State, No. 03C01-9508-

CR-00224, 1996 WL 397456 (Tenn. Crim. App., at Knoxville, July 15, 1996), no perm. to appeal filed.

Petitioner filed a pro se petition for writ of habeas corpus relief in which he again argued that his convictions were void because he received the ineffective assistance of counsel and that his pleas of guilty were not voluntarily, understandingly or knowingly made. In his habeas corpus petition, Petitioner alleged that the trial court failed to comply with Mackey guidelines before accepting his pleas, and that the State offered an insufficient factual basis at the guilty plea submission hearing in support of his convictions. See State v. Mackey, 553 S.W.2d 337 (Tenn. 1997). Petitioner alleged that his trial counsel provided ineffective assistance because he failed to inform Petitioner of the sentencing range for his offenses and did not explain the elements of an aggravated rape offense to him. Citing Cunningham, Petitioner also argued that his sentence was excessive because he should have been sentenced as an especially mitigated offender instead of a Range I, standard offender and that, as a result, his sentences are illegal and void.

The State filed a motion to dismiss the habeas corpus petition because the petition did not state a cognizable claim for habeas corpus relief, and the trial court granted the State's motion without the appointment of counsel and without an evidentiary hearing. On appeal, Petitioner argues that the trial court erred in summarily dismissing his habeas corpus petition.

II. Standard of Review

The right to habeas corpus relief is available "only when 'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007) (quoting Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993)). In contrast to a post-conviction petition, a habeas corpus petition is used to challenge void and not merely voidable judgments. Summers, 212 S.W.3d at 255-56. "A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity." Id. at 256 (quoting Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). "A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment." Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999); accord Dykes, 978 S.W.2d at 529.

A petitioner bears the burden of proving a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of counsel and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. See Summers, 212 S.W.3d at 260; Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

The determination of whether habeas corpus relief should be granted is a question of law. Summers, 212 S.W.3d at 255; Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). "Therefore, our

review is de novo with no presumption of correctness given to the findings and conclusions of the lower courts." Summers, 212 S.W.3d at 255; accord State v. Livingston, 197 S.W.3d 710, 712 (Tenn. 2006).

III. Analysis

Allegations relating to the voluntariness of a guilty plea and the ineffective assistance of counsel in connection with the entry of a plea, even if true, would not render the judgment of conviction void, but merely voidable. See Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); Luttrell v. State, 644 S.W.2d 408, 409 (Tenn. Crim. App. 1982). Both claims would require proof beyond the face of the record and appropriate findings to establish their validity. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn.1999) (observing that a voidable judgment is one that is "facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity"). Neither allegation, therefore, presents a ground for relief which is cognizable in the habeas corpus forum.

Relying on Cunningham v. California, Petitioner also argues that his sentences are excessive and void because he should have been sentenced as an especially mitigated offender instead of a Range I, standard offender. Prior to Cunningham, the United States Supreme Court held that the "statutory maximum" to which a trial court may sentence a defendant is not the maximum sentence after application of appropriate enhancement factors, other than the fact of a prior conviction, but the "maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely v. Washington, 542 U.S. 296, 303, 124 S. Ct. 2531, 2537, 159 (2004). Under Blakely, then, the "statutory maximum" sentence which may be imposed is the presumptive sentence applicable to the conviction offense. Id. In Cunningham, the Supreme Court held that a determinate sentencing law, similar to Tennessee's pre-2005 sentencing law, which permits judges to impose sentences above the statutory maximum based on judicially-found facts violates a defendant's Sixth Amendment right to a jury trial. Cunningham, 549 U.S. 270, 127 S. Ct. at 860.

Petitioner's claim that his sentence violates Blakely/Cunningham is without merit because his case became final before either case was decided. "Apprendi/Blakely type issues regarding allocating fact-finding authority to judges during sentencing are not in the narrow class of procedural rules that apply retroactively." Ulysses Richardson v. State, No. W2006-01856-CCA-R3-PC, 2007 WL 1515162, at *2 (Tenn. Crim. App. May 24, 2007), perm. to appeal denied (Tenn. Sept. 17, 2007). Moreover, even a valid Blakely or Cunningham claim renders a conviction voidable, not void, and is thus non-cognizable in habeas corpus review. Id. at *3.

In any event, we observe that neither Blakely nor Cunningham is implicated in Petitioner's sentences because the trial court did not apply any enhancement factors and sentenced Petitioner pursuant to the negotiated plea agreement to the then-applicable minimum statutory sentence within the sentencing range for a Range I, standard offender convicted of a Class A felony, or fifteen years, for all three offenses. See T.C.A. §§ 39-13-502(b) (1996); 40-35-112(a)(1) (1996) (providing that

the sentencing range for a Range I, standard offender, convicted of a Class A felony is not less than fifteen years nor more than twenty-five years).

Citing Michael Dwayne Edwards v. State, No. M2006-01043-CCA-R3-HC, 2007 WL 92359 (Tenn. Crim. App., at Nashville, Jan. 11, 2007), perm. to app. granted, (Tenn. June 25, 2007), Petitioner apparently argues that the trial court erred in not granting him an evidentiary hearing based on his erroneous range classification as a standard offender. Petitioner's reliance on Michael Dwayne Edwards, however, is misplaced.

In that case, the trial court summarily dismissed the petitioner's habeas corpus petition in which he alleged that his sentence was illegal as a result of an improper range classification. Following a jury trial which resulted in his burglary conviction, Petitioner was sentenced as a Range III, persistent offender, based on the presence of five felony convictions. See T.C.A. § 40-35-107(a)(1). Petitioner attached copies of his judgments of conviction to his habeas corpus petition which indicated that one of the qualifying felony convictions related to an offense that occurred subsequent to the burglary offense. A panel of this Court concluded that Petitioner's allegation, if true, would result in a sentence in direct contravention of a statute and accordingly would be an illegal sentence. Michael Dwayne Edwards, 2007 WL 92359, at *1-2. The panel reversed the judgment of the habeas court summarily dismissing the petition and remanded for the appointment of counsel and an evidentiary hearing to determine whether the petitioner's range classification was improper. Id.

Unlike Petitioner's situation, however, the defendant in Michael Dwayne Edwards was found guilty by a jury. Following the jury's verdict, the trial court was required to sentence the defendant pursuant to the 1989 Sentencing Act, which included the determination of his proper range classification. See State v. Gregory L. Sain, No. M2006-00865-CCA-R3-CD, 2008 WL 6249241 (Tenn. Crim. App., at Nashville, Mar. 26, 2008), perm. to appeal denied (Tenn. July 7, 2008). Our supreme court, however, recently reiterated "that offender classification and release eligibility are non-jurisdictional and may be used as bargaining tools by the State and the defense in plea negotiations. Hoover v. State, 215 S.W.3d 776, 780-81 (Tenn. 2007). The Hoover court reaffirmed two propositions. "First, a plea-bargained sentence is legal so long as it does not exceed the maximum punishment authorized for the plea offense. Second, a knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility." Id. at 780 (internal citations omitted).

Petitioner entered into a negotiated plea agreement whereby he agreed to enter pleas of guilty to three counts of aggravated rape in exchange for the State's recommendation that he be sentenced as a Range I, standard offender, to the minimum sentence in the range, or fifteen years, for each conviction. There is nothing on the face of Petitioner's judgments of conviction evidencing that the trial court was without jurisdiction or authority to sentence Petitioner, or that his sentences have expired.

Moreover, a defendant, as is the case with Petitioner, who has no prior criminal history is sentenced as a Range I, standard offender. T.C.A. § 40-35-105. The absence of a prior criminal history may make a defendant eligible for sentencing as an especially mitigated offender if the trial court finds, in addition to the lack of a prior criminal history, that mitigating, but no enhancement, factors are applicable. Id. § 40-35-109. Unlike the petitioner in Michael Dwayne Edwards, the record in the case sub judice does not indicate what mitigating factors, if any, were applicable in Petitioner's case, and Petitioner himself asserts in his brief that "there were no enhancement or mitigating factors in his case." Thus, even if Petitioner's allegation that he was qualified for especially mitigated offender status were true, proof of such status would require extrinsic evidence rendering his judgments of conviction potentially voidable rather than void.

Because the habeas corpus petition does not state a cognizable claim for habeas corpus relief, we conclude that the trial court did not err in summarily dismissing the petition. Petitioner is not entitled to relief on these issues.

CONCLUSION

After a thorough review, we affirm the judgment of the trial court.

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THOMAS T. WOODALL, JUDGE